

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

ROBERT H. KOONS, JR. and SALLY KOONS, his wife,	:	CIVIL ACTION
	:	
Plaintiffs,	:	
	:	
v.	:	
	:	JURY TRIAL DEMANDED
PIEDMONT HAWTHORNE AVIATION, HAWTHORNE:	:	
A-B-E, INC., n/k/a HAWTHORNE AIRPORT	:	
SERVICES, INC., and PIEDMONT HAWTHORNE	:	No. 02CV2739
HOLDINGS, INC.,	:	
	:	
Defendants.	:	

PLAINTIFFS' PRETRIAL MEMORANDUM

I. Nature of Action and Basis of Jurisdiction

Plaintiffs Robert and Sally Koons filed this action against Defendants Piedmont Hawthorne Aviation, Hawthorne A-B-E, Inc., and Piedmont Hawthorne Holdings, Inc (hereafter referred to as "Piedmont Hawthorne") pursuant to the legal theories of negligence and breach of warranty. Plaintiffs' allege that defendant Piedmont Hawthorne was negligent in performing an annual inspection of the accident aircraft on March 22, 2000 by failing to discover and correct pre-existing wrinkles in the left wing fuel bladder tank of the aircraft, thereby allowing entrapped water contamination in the fuel system to migrate to the engine causing a power interruption that led to the crash of plaintiffs aircraft on May 9, 2000.

As a result of the accident, Mr. Koons sustained an L-1 compression/burst fracture, and other physical and emotional injuries, plus economic damages, including medical expenses, loss of earning capacity, and property damage loss. Mrs. Koons was deprived of her husband's services, society, companionship, consortium and earnings.

Plaintiffs invoke this Court's jurisdiction pursuant to 28 U.S.C. § 1332 due to diversity of citizenship between the parties and an amount in controversy exceeding \$100,000.

Specifically, Mr. and Mrs. Koons were residents of the State of New York at the time of filing this complaint. Defendant Piedmont Hawthorne Aviation, a Delaware Corporation, operates its principal place of business in North Carolina. Defendant Piedmont Hawthorne A-B-E, Inc., a South Carolina corporation, operates its principal place of business in South Carolina. Defendant Piedmont Hawthorne Holdings, Inc., a Delaware Corporation, operates its principal place of business in South Carolina.

The Eastern District of Pennsylvania maintains venue pursuant to 28 U.S.C. § 1391 in that the Piedmont defendants do business in Allentown, Pennsylvania, within the Eastern District of Pennsylvania, and substantial events and omissions occurred at the Piedmont defendants Allentown facility.

II. Brief Statement of the Facts of the Case

This lawsuit arises out of an airplane accident which occurred on May 9, 2000 when the single engine Cessna 210 aircraft piloted by plaintiff, Robert Koons crashed in Fayetteville, North Carolina.

On the day of the accident, Mr. Koons departed from Columbia County Airport, Hudson, New York with a final destination of Gilbert Airport near Winter Haven, Florida. A fuel stop was planned for Fayetteville Regional Airport, North Carolina.

On final approach to the Fayetteville Airport, the aircraft's engine lost power and quit causing an off-airport crash landing.

Post crash investigation disclosed a large pre-existing wrinkle in the left fuel cell bladder found to measure approximately 11/16 inches in height.

There are two basic kinds of fuel contamination, solid and water. Water contamination is a major cause of fuel related accidents. There are three ways water can enter a fuel system. The first is condensation. The second way water gains access to the fuel system is through the fuel filler caps. The third way water can enter a fuel system is when it is refueled.

Fuel cells or bladder tanks are made of a heavy, rubberized material. The cell sit in a wing cavity designed to support the fuel tank. The top of the cell is held to the top of the wing by clips or snap buttons. Mechanics should inspect all fuel cells for proper installation at each annual or 100 hour inspection.

A wrinkle in a fuel cell bladder allows damming of water or contamination, prevents the water or other contaminants from being drained from the fuel tank, and permits these contaminants to ultimately migrate to the fuel delivery system and into the engine causing loss of power or the engine to quit.

Approximately seven weeks prior to accident, on March 22, 2000, the Piedmont defendants performed an annual inspection on the aircraft and certified that the aircraft was determined to be in an airworthy condition.

Piedmont Hawthorne Inspection Procedures Manual requires a detailed inspection of the entire aircraft including the fuel system. This inspection is to be performed in accordance with the Federal Aviation Regulations and the manufacturer's recommendations.

The Federal Aviation Administration identifies the minimum tools for inspection as a flashlight, inspection mirror, and magnifying glass.

Defendant Piedmont Hawthorne did not inspect the fuel cell using an inspection mirror and did not see the wrinkle at the time of the inspection.

Further, Piedmont Hawthorne did not drain the fuel tank and/or conduct a detailed inspection of the interior fuel cell despite being aware of the history that wrinkles in the fuel bladders of this model Cessna aircraft are prevalent.

III. Items of Monetary Damages Claimed

- | | | |
|----|---|------------------------|
| 1. | Past Medical and Accident Related Bills | \$17,472.47 |
| 2. | Current and Future Medical Bills | To Be Supplied |
| 3. | Lost Profit on Sale of Aircraft | \$25,000.00 (approx.) |
| 4. | Loss of Earning Capacity | \$245,055 to \$321,703 |
| 5. | Pain and Suffering | |
| 6. | Loss of Life's Pleasures | |
| 7. | Loss of Consortium | |

IV. Witness List

A. Liability

1. Mahlon Richards, Manager/Gail Howard
Richmor Aviation
P.O. Box 423
Hudson, NY 12534
2. Roger Baker
Firefighter
c/o 433 Hay Street
Fayetteville, NC 28301
3. Donnie Stafford
Fire Captain
c/o 433 Hay Street
Fayetteville, NC 28301

4. Mark C Ake
Firefighter
c/o 433 Hay Street
Fayetteville, NC 28301
5. Brad Whited/Ralph Hamilton
Airport Director of Operations
Fayetteville Regional Airport
6. Charlie Averitte
Firefighter
c/o 433 Hay Street
Fayetteville, NC 28301
7. Ben Nichols
Assistant Fire Chief
City of Fayetteville Fire Department
c/o 433 Hay Street
Fayetteville, NC 28301
8. Chief Michael Allen
City of Fayetteville Fire Department
c/o 433 Hay Street
Fayetteville, NC 28301
9. Jay Leonard
HAZMAT Section
City of Fayetteville
c/o 433 Hay Street
Fayetteville, NC 28301
10. Dale Spiller
City of Fayetteville
c/o 433 Hay Street
Fayetteville, NC 28301
11. Chris Johnson
City of Fayetteville
c/o 433 Hay Street
Fayetteville, NC 28301
12. Ronnie Powers
Atlanta Air Salvage
1140 Uniform Road
Griffin, GA 30223

13. Chris Cartwright
Atlanta Air Salvage
1140 Uniform Road
Griffin, GA 30223
14. Gary Ramsey
Atlanta Air Salvage
1140 Uniform Road
Griffin, GA 30223
15. Steven Poss
Atlanta Air Salvage
1140 Uniform Road
Griffin, GA 30223
16. Robert Koons
11 Rose Drive
Hatfield, PA 19440
17. Sally Koons
11 Rose Drive
Hatfield, PA 19440
18. Robert Boyd, Jr.
PIEDMONT HAWTHORNE
Lehigh Valley International Airport
600 Hayden Circle
Allentown, PA 18103
19. James Dinan
PIEDMONT HAWTHORNE
Lehigh Valley International Airport
600 Hayden Circle
Allentown, PA 18103
20. Paul Tobin
PIEDMONT HAWTHORNE
Lehigh Valley International Airport
600 Hayden Circle
Allentown, PA 18103
21. A.J. Fiedler
A.J. FIEDLER & ASSOC.
P.O. Box 761
Imperial, PA 15126-0761

22. Jerry L. Wells
32216 107th Place, S.E.
Auburn, WA 98092
23. Dennis Handley
2320 Surrey Lane, #94
McKeesport, PA 15135
24. Nicholas Stone
PMB 113
3000 Old Alabama Road
Suite 119
Alpharetta, Georgia 30022
25. Scott Anglin
Anglin Aircraft Recovery Services
4901 Holletts Corner Road
Clayton, DE 19938
26. Jeremy Vannoy
Anglin Aircraft Recovery Services
4901 Holletts Corner Road
Clayton, DE 19938

B. **Damages**

27. Robert Koons
11 Rose Drive
Hatfield, PA 19440
28. Sally Koons
11 Rose Drive
Hatfield, PA 19440
29. Robert A. Cheney, M.D.
Capital Region Orthopaedic
1367 Washington Ave., #200
Albany, NY 12206
30. Robert M. Schneider, MD
6225 Route 23A
P.O. Box 60
Tannersville, NY 12485

31. John Burke, Ph.D.
Harvey S. Rosen, Ph.D.
BURKE, ROSEN & ASSOCIATES
2800 Euclid Avenue
Suite 300
Cleveland, OH 44115
32. Tim Diefenderfer
RR #1, Box 394 B
Hunter, NY 12442-9702
33. Bill Maley
P.O. Box 650
Hunter, NY 12442-0650

V. Exhibit List

A. Liability

1. Pre-Accident Photographs of N6607X
2. Richmor Aviation Detail History Report Re: Fuel Purchase of 5/9/00
3. Laminated Pre-Flight Checklist
4. Laminated Take-Off and Landing Checklist
5. Clipboard and Flight Notes of Robert Koons
6. New York, Washington and Charlotte Sectional Charts with Flight Routing
7. Airport Diagram/Map of Fayetteville Regional Airport
8. Model of N6607X
9. Sky 5 Live Crash Scene/Sight Photographs
10. Aircraft Wreckage
11. Fayetteville Fire Department Incident Report
12. Aircraft Logbooks for N6607X
13. Engine Logbooks for N6607X

14. Propeller Logbooks for N6607X
15. Pilot Logbooks of Robert Koons
16. Cessna 210 Owners Manual
17. Investigative and Wreckage Photographs of A.J. Fiedler
18. Wing Tank Dimensions and Capacity Calculations
19. Certificate of Aircraft Registration
20. Standard Airworthiness Certificate
21. Type Certificate Data Sheet 3A21
22. Fuel Consumption Calculations
23. Excerpts from Cessna 210 Illustrated Parts Catalog
24. Excerpts from Cessna 210 Service Manual, including Fuel Pump and strainer Assembly, Fuel System Installation, and Fuel Tank Installation
25. FAA Aircraft File-Airworthiness
26. AD Note Summary Sheet
27. AD 78-05-06 R1, including Cessna Service Letter SE 78-10 and Goodyear Service Bulletin FT-77-1
28. AD 84-10-01 R1, including Cessna Service Information Letters SE84-8, SE82-34 and SE94-9
29. AD 79-10-14R1 re Fuel Tank Venting, including Cessna Service Letter SE77-6, and Service Kit SK182-85
30. AD 66-19-02, including Cessna Service Letter 65-39
31. Special Airworthiness Information Bulletin CE-03-43R1
32. Cessna Service Bulletin 99-18A
33. Excerpts from FAA Advisory Circular 43.13-1B

34. FAA Advisory Circular 39-7C
35. FAA Advisory Circular 43-9C
36. Excerpts of 14CFR Part 39
37. Excerpts of 14CFR Part 43
38. Excerpts of 14CFR Part 91
39. Excerpts of 14CFR Part 145
40. Excerpts from 14CFR, Part 23
41. Excerpts from CAR Part 4(a)
42. Excerpts from CAR Part 3
43. Piedmont Hawthorne Repair Station-Inspection Procedures Manual
44. City of Fayetteville Incident Report 00-005161
45. Mock-Up of Fuel System
46. Piedmont Hawthorne Work Order Package Number 2609
47. Piedmont Hawthorne Work Order Package Number 2736
48. Piedmont Hawthorne Work Order Package Number 2943
49. Deposition Exhibits from Piedmont Hawthorne Depositions
50. Annual/100 Hour Aircraft Inspection Checklist
51. Signed Statement of Robert Boyd
52. Cessna Pilot Safety and Warning Supplements
53. Maintenance Timeline Chart
54. Weight and Balance Computations
55. Cessna Customer Car Owner Advisory SE82-36A
56. Cessna Aircraft Co. Inspection Checklist and Service Manual Procedures

57. FAA Airman File for Robert Koons
58. FAA Aeromedical File for Robert Koons
59. FAA Certification File Re: No Enforcement Actions against Robert Koons
60. May 24, 2002 Letter from Sally Koons
61. Document Production by Defendant in Response to Plaintiffs' Request for Production
62. CAR Part 3.444 (a)(b) and (c)
63. Exemplar Fuel Cell and Bay
64. Exemplar Fuel Bladders
65. Courtroom Demonstration Re: Formation of Wrinkles in Bladder Tanks
66. Videotapes of Water in and Water Exiting Fuel Systems
67. Videotapes of Various Sources of Water Contamination
68. Exemplar Inspection Mirror
69. Exemplar Inspection Flashlight

Plaintiffs reserve the right to supplement and/or amend this list upon receipt of defendant's exhibit list and further reserves this right depending upon the Court ruling on Plaintiffs' Motion to Create Trial Exhibits from Accident Wreckage.

Damages

100. Records of Cape Fear Medical Center including previously bates stamped numbers: 0093 to 0101; 0123-0126; 0135-0138; 0140-0155; 0205
 - a. Discharge Summary (1 page) (Bates 0093)
 - b. History & Physical (2 pages) (0094-0095)
 - c. Consultation Report (1 page) (0099)
 - d. Consultation Report (2 pages) (0100-0101)

- e. Radiology Reports (4 pages) (0123-0126)
 - f. Physical Therapy Eval. (3 pages) (0135-0137)
 - g. Transfer Summary (1 page) (0205)
 - h. Cape Fear Admin. Record (17 pages) (0138-0155)
- 101. Records of Dr. Robert Cheney consisting of records previously Bates stamped 0197-0200.
 - 102. Records of Dr. Robert M. Schneider consisting of records previously Bates stamped 0212-0218.
 - 103. Billing from Robert A. Cheney
 - 104. Billing from Eye Associates
 - 105. Billing from Carolina Neurosurgical Services
 - 106. Billing from Carolina Rehabilitation
 - 107. Billing from Carolina Regional Radiology
 - 108. Billing from Cape Fear Billing
 - 109. Billing from Travel and Lodging to South Carolina
 - 110. Billing from Supplies needed while in Hospital
 - 111. X-Rays/MRI and CT Scans of the L-Spine/Spine regarding Robert Koons and Radiology Reports Related Thereto
 - 112. Mercy Rehab Station Physical Therapy Records and Bills
 - 113. Updated Office Notes of Robert Schneider, M.D.
 - 114. Updated Office Notes of Robert Cheney, M.D.
 - 115. Model of Spine
 - 116. Medical Diagrams Depicting Mr. Koons' Injury
 - 117. Prescription Drug Receipts Including Recent Prescription for Wellbutrin for Depression

- 118. Photographs of Robert Koons wearing Back Brace
- 119. Income Tax Returns for Robert and Sally Koons from 1997 through 2002
- 120. Damage Summary Chart regarding Economic Losses
- 121. Total Damage Summary Chart
- 122. Bills for Aircraft Wreckage Storage Post-Accident
- 123. Aircraft Sales Contract Dated April 27, 2000
- 124. Current/Recent Pay Stub of Robert Koons

VI. Trial Days

Plaintiffs will need 3 to 4 trial days to present their case-in-chief.

VII. Special Comments

a. Motion in Limine

1. **Exclude Evidence or Testimony Re: Plaintiff's Medical Certificate Expiration**

On October 15, 2003, defendant Piedmont Hawthorne served upon Plaintiffs a Request for Admission. The request asked plaintiffs to admit that plaintiff, Mr. Koons, did not possess a current medical certificate on the date of the crash. This was first time that defendants identified Mr. Koons' lack of a current medical certificate as an issue in this case and in fact this was not mentioned as a cause of the accident by the defendant's sole liability expert. As such, plaintiffs will be filing with the Court a Motion in Limine to exclude any reference to Mr. Koons' not possessing a current medical certificate.

b. Plaintiff's request defendant to stipulate to admissibility of certain medical records and bills.

c. Outstanding Motion re: Creation of Trial Exhibit from Accident Wreckage.

- d. Subrogation Liens for Medical Bills and Worker's Compensation Totaling Approximately \$10,000.00

Respectfully submitted,

WOLK & GENTER

BY:

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